

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

UNITED STATES OF AMERICA and	)
STATE OF TENNESSEE,	)
	)
Plaintiffs,	)
	)
v.	) Civil Action No.: 3:16-cv-2380
	) District Judge Sharp
VANGUARD HEALTHCARE, LLC,	) Magistrate Judge Newbern
VANGUARD HEALTHCARE SERVICES,	)
LLC,	)
BOULEVARD TERRACE, LLC,	)
VANGUARD OF CRESTVIEW, LLC,	)
GLEN OAKS, LLC, IMPERIAL GARDENS	)
HEALTH AND REHABILITATION, LLC,	)
VANGUARD OF MEMPHIS, LLC,	)
VANGUARD OF MANCHESTER, LLC and	)
MARK MILLER,	)
	)
Defendants	)

**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO STAY  
RESPONSE TO PLAINTIFFS' COMPLAINT**

Vanguard Healthcare, LLC, and its affiliated entities, Vanguard Healthcare Services, LLC, Boulevard Terrace, LLC, Vanguard of Crestview, LLC, Glen Oaks, LLC, Imperial Gardens and Rehabilitation, LLC, Vanguard of Memphis, LLC, and Vanguard of Manchester, LLC, (collectively referred herein as "Vanguard" or "Defendant")<sup>1</sup> pursuant to local civil Rule 7.01(a) submits this Memorandum in support of its motion to stay Vanguard's response to Plaintiffs' Complaint by extending the deadline to file an answer to Plaintiffs' Complaint pending resolution on the issue of whether this action is stayed by 11 U.S.C. § 362(a)(1).

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<sup>1</sup> Defendant Mark Miller has just been served and will likely have separate counsel. Nevertheless, the relief granted by the Vanguard Defendants should be applicable to Defendant Mark Miller also.

## **BACKGROUND**

1. All of the Vanguard entities that are listed as Defendants in this Civil Action are Debtors under Chapter 11 in the administratively consolidated Case No.16-03296 currently pending in the United States Bankruptcy Court for the Middle District of Tennessee<sup>2</sup>. All of these entities filed voluntary petitions for relief under Chapter 11 on May 6, 2016.

2. The U.S. Bankruptcy Court entered an order on June 21, 2016 (Bankruptcy Docket No. 185 in Case No. 16-3296), in which Plaintiffs agreed to file any claims that they assert under the False Claim Act against the Debtors on or before September 6, 2016.

3. On September 6, 2016, Plaintiffs filed proofs of claim asserting claims under the False Claim Act against the following Debtors:

<u>Debtor</u>	<u>Amount</u>
Vanguard Healthcare, LLC	\$56,545,506.00
Vanguard Healthcare Services, LLC	\$58,731,516.00
Vanguard Financial Services, LLC	\$58,731,516.00
Boulevard Terrace, LLC	\$8,722,008.00
Elderscript Services, LLC	\$58,731,516.00
Glen Oaks, LLC	\$12,582,366.00
Vanguard of Crestview, LLC	\$14,250,000.00
Vanguard of Manchester, LLC	\$385,968.00
Vanguard of Memphis, LLC	\$16,023,954.00

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<sup>2</sup> The Debtors in the bankruptcy cases, along with the last four digits of each Debtor's federal tax identification number, are: Vanguard Healthcare, LLC (9650); Vanguard Healthcare Services, LLC (7563); Vanguard Financial Services, LLC (3403); Aurora Australis, LLC (7099); Boulevard Terrace, LLC (8709); Elderscript Services, LLC (4179); Eldercare of Jackson County, LLC (7855); Glen Oaks, LLC (8238); Palace RBS, LLC (9601); Shady Lawn, LLC (7397); Vanguard of Ashland, LLC (8367); Vanguard of Church Hill, LLC (1049); Vanguard of Crestview, LLC (1046); Vanguard of Manchester, LLC (6203); Vanguard of Memphis, LLC (4623); Vanguard of Ripley, LLC (1050); Vicksburg Convalescent, LLC (7298); and Whitehall OpCo, LLC (6186).

4. On the same day as filing the proofs of claim, Plaintiffs also commenced this action by filing a Complaint against the Vanguard entities and Mark Miller, a former employee of Vanguard, requesting a jury trial on claims asserted under the False Claims Act and other common law claims.

5. For the reasons stated in Defendants Response to Plaintiffs' Joint Motion for an Order that their Pending False Claims Act Civil Action is Legally Excepted from the Automatic Stay in Bankruptcy (Docket No. 2) ("Stay Relief Motion"), Defendants assert that the Plaintiffs' claims should be determined by the Bankruptcy Court pursuant to the proof of claim procedures in the Debtors' Chapter 11 cases, and that Plaintiffs' Complaint violates the automatic stay imposed upon the filing of the Debtors' Chapter 11 cases pursuant to 11 U.S.C. § 362(a)(1).

### **GROUND FOR RELIEF**

6. Rule 6(b) of the Federal Rules of Civil Procedure authorizes the Court "for good cause" to extend any response time established under the Federal Rules of Civil Procedure.

7. Defendants assert that cause exists under these circumstances for the following reasons:

- a. The Motion is being submitted well before the deadline for the filing of such response to Plaintiffs' Complaint and thus the more strict standards of "excusable neglect" do not apply.
- b. A good faith dispute exists as to whether the Plaintiffs' Complaint violates the automatic stay pursuant to 11 U.S.C. § 362(a)(1) and whether Plaintiffs' Stay Relief Motion must be brought before the Bankruptcy Court.

- c. Judicial economy is best served by staying any proceedings on Plaintiffs' Complaint pending a determination whether the litigation is subject to the automatic stay under 11 U.S.C. § 362(a).
- d. If not dismissed in conjunction with the Stay Relief Motion, judicial economy is also best served for this Civil Action to be stayed during the proof of claim process in the Debtors' Chapter 11 cases. Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed until a party in interest objects. At this point, the Debtors have not filed objections to the proofs of claim, and thus Plaintiffs are asserting claims in their Complaint that, at least for the present time, are "deemed allowed" in Debtors' Chapter 11 cases.

This 20th day of September, 2016.

Respectfully Submitted:

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***Special Litigation Counsel to the Debtor Defendants***

**CERTIFICATE OF SERVICE**

I hereby certify that on the 20th day of September, 2016, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt.

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/s/ William L. Norton III

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